

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 457/2006

(Ravindra Baburao Ghongate (unsound mind) Thr. His father/Natural Guardian Baburao Shripat
 Ghongate (Marathe) **VERSUS** Shrawan Dagdu Sapkal)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri N.S. Badhe, Advocate for the appellant.
 Shri A.S. Jaiswal, Advocate for the respondent.

CORAM : Smt. Vasanti A. Naik, J.

DATE : 13th August, 2007.

Heard learned counsel for the parties.

The appellant is the original defendant. A suit was filed by the plaintiff for grant of the relief of specific performance of contract. It was the case of the plaintiff that the defendant had agreed to sell the suit land to the plaintiff for a consideration of Rs. 1,15,000/-. An amount of Rs.25,000/- was paid to the plaintiff as earnest amount. It was the case of the plaintiff that the respondent refused to perform his part of contract, and therefore, the plaintiff instituted the suit seeking the aforesaid relief.

The defendant denied the claim of the

plaintiff. It was the case of the defendant that the defendant was not owner of the suit property and in fact his father was owner of the same. The defendant further contended that his father had purchased the suit property by registered sale-deed. The defendant also pleaded that the suit was bad for non joinder of the necessary parties and was not maintainable as such. The defendant consequently prayed for the dismissal of the suit of the plaintiff. It was then pleaded on behalf of the defendant that the defendant was not mentally sound at the time of the execution of agreement of sale.

The trial Court framed the issues and after considering the oral and documentary evidence tendered by the plaintiff and the documentary evidence tendered by the defendant held that the plaintiff had proved that the defendant had agreed to sell the suit property to the plaintiff. The Court further held that the plaintiff was ever ready and willing to

perform his part of the contract and that the defendant failed to perform his part. The Court observed that there was ample material on record to hold that the property belonged to the defendant and since the defendant was vendor of the suit land who had entered into an agreement of sale, the defendant was the only necessary party and it was not necessary for the plaintiff to join the father of the defendant as a party to the suit. The trial Court also observed that the defendant failed to enter the witness box and also did not tender any other evidence to show that he was mentally unsound as pleaded in the written statement. The trial Court decreed the suit of the plaintiff and granted a decree for specific performance of contract.

The defendant challenged the judgment and decree in an appeal which was also dismissed by the judgment dated 09.08.2004. The two judgments are challenged in this second appeal.

Shri Badhe, the learned counsel for the

appellant raised several grounds in this second appeal. According to the counsel for the appellant, the appellant did not get proper opportunity to defend his case and hence, it was necessary to remand the matter to the trial Court for a fresh adjudication of the lis on merits after affording an opportunity to the defendant. It was also canvassed on behalf of the appellant that the father of the appellant was in fact the owner of the property and the Courts had wrongly given undue weightage to the documentary evidence produced by the plaintiff in the form of mutation entries and failed to give weightage to the two documents produced by the defendant at Exh.31 and Exh.32. The counsel for the appellant then submitted that it was incumbent for the trial Court to have framed an issue about the ownership of the suit property as the defendant had specifically raised a plea that the defendant was not the owner of the suit property and his father was the owner of the same.

The learned counsel for the respondent, on the other hand, supported the judgments passed by both the Courts and submitted that the findings recorded by both the Courts are pure findings of facts based on a proper appreciation of material evidence on record and hence, the second appeal is liable to be dismissed.

I have perused both the judgments. A perusal of the judgments clearly shows that the defendant was given ample opportunity by the trial Court to tender evidence. The plaintiff had closed his evidence on 19.02.1997. Though repeated chances were given to the defendant, the defendant failed to adduce any oral evidence. The trial Court, therefore, did not have any other alternative but to fix the suit for hearing of arguments. In such circumstances, the trial Court proceeded to consider the oral and documentary evidence produced by the plaintiff as

also the documentary evidence which was produced by the defendant and admitted by the plaintiff. The Court weighed the documents produced by both the parties and held that the defendant was the owner of the property and had failed to prove that the father of the defendant was the owner of the suit property. Though the defendant had produced certain documentary evidence on record and though the plaintiff had also admitted some of the documents produced by the defendant, it is notable that the defendant had not produced the main document, the document of title, registered sale-deed by which his father purchased the suit property. As rightly held by both the Courts, the father of the defendant was not a necessary party to the litigation and the defendant had also failed to prove that he was not mentally fit at the time of the execution of the agreement of sale. Since both the Courts had concurrently recorded a clear finding of fact that the plaintiff was ready and

willing to perform his part of the contract and the defendant was failed to perform his part, the decree for grant of specific performance of contract was rightly passed in favour of the plaintiff. None of the submissions made on behalf of the appellant and none of the grounds raised in the second appeal give rise to any substantial question of law.

The second appeal is, therefore, liable to be dismissed and is dismissed as such with no order as to costs.

JUDGE

APTE